

2007—Subsec. (d). Pub. L. 110–153 added subsec. (d).

#### EFFECTIVE DATE

Section effective July 1, 2009, see section 203(c)(1) of Pub. L. 110–84, set out as an Effective Date of 2007 Amendment note under section 1078–3 of this title.

### § 1098f. Deferral of loan repayment following active duty

#### (a) Deferral of loan repayment following active duty

In addition to any deferral of repayment of a loan made under this subchapter and part C of subchapter I of chapter 34 of title 42 pursuant to section 1078(b)(1)(M)(iii), 1087e(f)(2)(C), or 1087dd(c)(2)(A)(iii) of this title, a borrower of a loan under this subchapter and part C of subchapter I of chapter 34 of title 42 who is a member of the National Guard or other reserve component of the Armed Forces of the United States, or a member of such Armed Forces in a retired status, is called or ordered to active duty, and is enrolled, or was enrolled within six months prior to the activation, in a program of instruction at an eligible institution, shall be eligible for a deferment during the 13 months following the conclusion of such service, except that a deferment under this subsection shall expire upon the borrower's return to enrolled student status.

#### (b) Active duty

Notwithstanding section 1088(d) of this title, in this section, the term “active duty” has the meaning given such term in section 101(d)(1) of title 10, except that such term—

- (1) does not include active duty for training or attendance at a service school; but
- (2) includes, in the case of members of the National Guard, active State duty.

(Pub. L. 89–329, title IV, § 493D, as added Pub. L. 110–84, title II, § 204, Sept. 27, 2007, 121 Stat. 795.)

#### EFFECTIVE DATE

Section effective Oct. 1, 2007, see section 1(c) of Pub. L. 110–84, set out as an Effective Date of 2007 Amendment note under section 1070a of this title.

### § 1098g. Exemption from State disclosure requirements

Loans made, insured, or guaranteed pursuant to a program authorized by title IV of the Higher Education Act of 1965 (20 U.S.C. 1070 et seq.) [and 42 U.S.C. 2751 et seq.] shall not be subject to any disclosure requirements of any State law.

(Pub. L. 97–320, title VII, § 701(b), Oct. 15, 1982, 96 Stat. 1538.)

#### REFERENCES IN TEXT

The Higher Education Act of 1965, referred to in text, is Pub. L. 89–329, Nov. 8, 1965, 79 Stat. 1219, as amended. Title IV of the Act is classified generally to this subchapter and part C (§ 2751 et seq.) of subchapter I of chapter 34 of Title 42, The Public Health and Welfare. For complete classification of this Act to the Code, see Short Title note set out under section 1001 of this title and Tables.

#### CODIFICATION

Section was formerly classified to section 1099 of this title.

Section was enacted as part of the Garn-St Germain Depository Institutions Act of 1982, and not as part of title IV of the Higher Education Act of 1965 which comprises this subchapter.

#### EFFECTIVE DATE

Section effective both with respect to loans made prior to and after Oct. 15, 1982, see section 701(c) of Pub. L. 97–320, set out as an Effective Date of 1982 Amendment note under section 1603 of Title 15, Commerce and Trade.

### PART F–1—HIGHER EDUCATION RELIEF OPPORTUNITIES FOR STUDENTS

#### CODIFICATION

Part was formerly set out as a note set out under section 1070 of this title.

### § 1098aa. Short title; findings; reference

#### (a) Short title

This part may be cited as the “Higher Education Relief Opportunities for Students Act of 2003”.

#### (b) Findings

The Congress finds the following:

- (1) There is no more important cause than that of our nation's defense.
- (2) The United States will protect the freedom and secure the safety of its citizens.
- (3) The United States military is the finest in the world and its personnel are determined to lead the world in pursuit of peace.
- (4) Hundreds of thousands of Army, Air Force, Marine Corps, Navy, and Coast Guard reservists and members of the National Guard have been called to active duty or active service.
- (5) The men and women of the United States military put their lives on hold, leave their families, jobs, and postsecondary education in order to serve their country and do so with distinction.
- (6) There is no more important cause for this Congress than to support the members of the United States military and provide assistance with their transition into and out of active duty and active service.

#### (c) Reference

References in this part to “the Act” are references to the Higher Education Act of 1965 (20 U.S.C. 1001 et seq.).

(Pub. L. 108–76, § 1, Aug. 18, 2003, 117 Stat. 904.)

#### REFERENCES IN TEXT

The Higher Education Act of 1965, referred to in subsec. (c), is Pub. L. 89–329, Nov. 8, 1965, 79 Stat. 1219, which is classified generally to this chapter and part C (§ 2751 et seq.) of subchapter I of chapter 34 of Title 42, The Public Health and Welfare. For complete classification of this Act to the Code, see Short Title note set out under section 1001 of this title and Tables.

#### CODIFICATION

Section was formerly set out in a note under section 1070 of this title.

Section was enacted as part of the Higher Education Relief Opportunities for Students Act of 2003, and not as part of title IV of the Higher Education Act of 1965 which comprises this subchapter.

#### SENSE OF CONGRESS

Pub. L. 110–93, § 1, Sept. 30, 2007, 121 Stat. 999, provided that: “It is the sense of Congress that—

“(1) the Higher Education Relief Opportunities for Students Act of 2003 [this part] addresses the unique situations that active duty military personnel and other affected individuals may face in connection with their enrollment in postsecondary institutions and their Federal student loans; and

“(2) the provisions authorized by such Act should be made permanent, thereby allowing the Secretary of Education to continue providing assistance to active duty service members and other affected individuals and their families.”

**§ 1098bb. Waiver authority for response to military contingencies and national emergencies**

**(a) Waivers and modifications**

**(1) In general**

Notwithstanding any other provision of law, unless enacted with specific reference to this section, the Secretary of Education (referred to in this part as the “Secretary”) may waive or modify any statutory or regulatory provision applicable to the student financial assistance programs under title IV of the Act [20 U.S.C. 1070 et seq., 42 U.S.C. 2751 et seq.] as the Secretary deems necessary in connection with a war or other military operation or national emergency to provide the waivers or modifications authorized by paragraph (2).

**(2) Actions authorized**

The Secretary is authorized to waive or modify any provision described in paragraph (1) as may be necessary to ensure that—

(A) recipients of student financial assistance under title IV of the Act who are affected individuals are not placed in a worse position financially in relation to that financial assistance because of their status as affected individuals;

(B) administrative requirements placed on affected individuals who are recipients of student financial assistance are minimized, to the extent possible without impairing the integrity of the student financial assistance programs, to ease the burden on such students and avoid inadvertent, technical violations or defaults;

(C) the calculation of “annual adjusted family income” and “available income”, as used in the determination of need for student financial assistance under title IV of the Act for any such affected individual (and the determination of such need for his or her spouse and dependents, if applicable), may be modified to mean the sums received in the first calendar year of the award year for which such determination is made, in order to reflect more accurately the financial condition of such affected individual and his or her family;

(D) the calculation under section 484B(b)(2) of the Act (20 U.S.C. 1091b(b)(2)) of the amount a student is required to return in the case of an affected individual may be modified so that no overpayment will be required to be returned or repaid if the institution has documented (i) the student’s status as an affected individual in the student’s file, and (ii) the amount of any overpayment discharged; and

(E) institutions of higher education, eligible lenders, guaranty agencies, and other en-

tities participating in the student assistance programs under title IV of the Act that are located in areas that are declared disaster areas by any Federal, State or local official in connection with a national emergency, or whose operations are significantly affected by such a disaster, may be granted temporary relief from requirements that are rendered infeasible or unreasonable by a national emergency, including due diligence requirements and reporting deadlines.

**(b) Notice of waivers or modifications**

**(1) In general**

Notwithstanding section 1232 of this title and section 553 of title 5, the Secretary shall, by notice in the Federal Register, publish the waivers or modifications of statutory and regulatory provisions the Secretary deems necessary to achieve the purposes of this section.

**(2) Terms and conditions**

The notice under paragraph (1) shall include the terms and conditions to be applied in lieu of such statutory and regulatory provisions.

**(3) Case-by-case basis**

The Secretary is not required to exercise the waiver or modification authority under this section on a case-by-case basis.

**(c) Impact report**

The Secretary shall, not later than 15 months after first exercising any authority to issue a waiver or modification under subsection (a), report to the Committee on Education and the Workforce of the House of Representatives and the Committee on Health, Education, Labor and Pensions of the Senate on the impact of any waivers or modifications issued pursuant to subsection (a) on affected individuals and the programs under title IV of the Act [20 U.S.C. 1070 et seq., 42 U.S.C. 2751 et seq.], and the basis for such determination, and include in such report the Secretary’s recommendations for changes to the statutory or regulatory provisions that were the subject of such waiver or modification.

**(d) No delay in waivers and modifications**

Sections 482(c) and 492 of the Higher Education Act of 1965 (20 U.S.C. 1089(c), 1098a) shall not apply to the waivers and modifications authorized or required by this part.

(Pub. L. 108–76, §2, Aug. 18, 2003, 117 Stat. 904.)

REFERENCES IN TEXT

The Higher Education Act of 1965, referred to in subsecs. (a) and (c), is Pub. L. 89–329, Nov. 8, 1965, 79 Stat. 1219. Title IV of the Act is classified generally to this subchapter and part C (§2751 et seq.) of subchapter I of chapter 34 of Title 42, The Public Health and Welfare. For complete classification of this Act to the Code, see Short Title note set out under section 1001 of this title and Tables.

CODIFICATION

Section was formerly set out in a note under section 1070 of this title.

Section was enacted as part of the Higher Education Relief Opportunities for Students Act of 2003, and not as part of title IV of the Higher Education Act of 1965 which comprises this subchapter.

**§ 1098cc. Tuition refunds or credits for members of armed forces**

**(a) Sense of Congress**

It is the sense of Congress that—

(1) all institutions offering postsecondary education should provide a full refund to students who are affected individuals for that portion of a period of instruction such student was unable to complete, or for which such individual did not receive academic credit, because he or she was called up for active duty or active service; and

(2) if affected individuals withdraw from a course of study as a result of such active duty or active service, such institutions should make every effort to minimize deferral of enrollment or reapplication requirements and should provide the greatest flexibility possible with administrative deadlines related to those applications.

**(b) Definition of full refund**

For purposes of this section, a full refund includes a refund of required tuition and fees, or a credit in a comparable amount against future tuition and fees.

(Pub. L. 108-76, § 3, Aug. 18, 2003, 117 Stat. 906.)

**CODIFICATION**

Section was formerly set out in a note under section 1070 of this title.

Section was enacted as part of the Higher Education Relief Opportunities for Students Act of 2003, and not as part of title IV of the Higher Education Act of 1965 which comprises this subchapter.

**§ 1098dd. Use of professional judgment**

A financial aid administrator shall be considered to be making a necessary adjustment in accordance with section 1087tt(a) of this title if the administrator makes adjustments with respect to the calculation of the expected student or parent contribution (or both) of an affected individual, and adequately documents the need for the adjustment.

(Pub. L. 108-76, § 4, Aug. 18, 2003, 117 Stat. 906.)

**CODIFICATION**

Section was formerly set out in a note under section 1070 of this title.

Section was enacted as part of the Higher Education Relief Opportunities for Students Act of 2003, and not as part of title IV of the Higher Education Act of 1965 which comprises this subchapter.

**§ 1098ee. Definitions**

In this part:

**(1) Active duty**

The term “active duty” has the meaning given such term in section 101(d)(1) of title 10, except that such term does not include active duty for training or attendance at a service school.

**(2) Affected individual**

The term “affected individual” means an individual who—

(A) is serving on active duty during a war or other military operation or national emergency;

(B) is performing qualifying National Guard duty during a war or other military operation or national emergency;

(C) resides or is employed in an area that is declared a disaster area by any Federal, State, or local official in connection with a national emergency; or

(D) suffered direct economic hardship as a direct result of a war or other military operation or national emergency, as determined by the Secretary.

**(3) Military operation**

The term “military operation” means a contingency operation as such term is defined in section 101(a)(13) of title 10.

**(4) National emergency**

The term “national emergency” means a national emergency declared by the President of the United States.

**(5) Serving on active duty**

The term “serving on active duty during a war or other military operation or national emergency” shall include service by an individual who is—

(A) a Reserve of an Armed Force ordered to active duty under section 12301(a), 12301(g), 12302, 12304, or 12306 of title 10 or any retired member of an Armed Force ordered to active duty under section 688 of such title, for service in connection with a war or other military operation or national emergency, regardless of the location at which such active duty service is performed; and

(B) any other member of an Armed Force on active duty in connection with such war, operation, or emergency or subsequent actions or conditions who has been assigned to a duty station at a location other than the location at which such member is normally assigned.

**(6) Qualifying National Guard duty**

The term “qualifying National Guard duty during a war or other military operation or national emergency” means service as a member of the National Guard on full-time National Guard duty (as defined in section 101(d)(5) of title 10) under a call to active service authorized by the President or the Secretary of Defense for a period of more than 30 consecutive days under section 502(f) of title 32, in connection with a war, another military operation, or a national emergency declared by the President and supported by Federal funds.

(Pub. L. 108-76, § 5, Aug. 18, 2003, 117 Stat. 906.)

**CODIFICATION**

Section was formerly set out in a note under section 1070 of this title.

Section was enacted as part of the Higher Education Relief Opportunities for Students Act of 2003, and not as part of title IV of the Higher Education Act of 1965 which comprises this subchapter.

**§ 1099. Transferred**

**CODIFICATION**

Section, Pub. L. 97-320, title VII, § 701(b), Oct. 15, 1982, 96 Stat. 1538, which related to exemption from State

disclosure requirements, was transferred to section 1098g of this title.

## PART G—PROGRAM INTEGRITY

### CODIFICATION

Pub. L. 105-244, title IV, § 491(1), Oct. 7, 1998, 112 Stat. 1758, added heading and struck out former heading.

This part was added as part H of title IV of Pub. L. 89-329 by Pub. L. 102-325, title IV, § 499, July 23, 1992, 106 Stat. 634. The letter designation of this part was changed from “H” to “G” for codification purposes. See Codification note preceding section 1087a of this title.

### SUBPART 1—STATE ROLE

#### CODIFICATION

Subpart 1 of part H of title IV of the Higher Education Act of 1965, comprising this subpart, was originally added to Pub. L. 89-329, title IV, by Pub. L. 102-325, title IV, § 499, July 23, 1992, 106 Stat. 635, and amended by Pub. L. 103-208, Dec. 20, 1993, 107 Stat. 2457. Subpart 1 is shown herein, however, as having been added by Pub. L. 105-244, title IV, § 491(2), Oct. 7, 1998, 112 Stat. 1759, without reference to those intervening amendments because of the extensive revision of subpart 1 by Pub. L. 105-244.

## § 1099a. State responsibilities

### (a) State responsibilities

As part of the integrity program authorized by this part, each State, through one State agency or several State agencies selected by the State, shall—

(1) furnish the Secretary, upon request, information with respect to the process for licensing or other authorization for institutions of higher education to operate within the State;

(2) notify the Secretary promptly whenever the State revokes a license or other authority to operate an institution of higher education; and

(3) notify the Secretary promptly whenever the State has credible evidence that an institution of higher education within the State—

(A) has committed fraud in the administration of the student assistance programs authorized by this subchapter and part C of subchapter I of chapter 34 of title 42; or

(B) has substantially violated a provision of this subchapter and part C of subchapter I of chapter 34 of title 42.

### (b) Institutional responsibility

Each institution of higher education shall provide evidence to the Secretary that the institution has authority to operate within a State at the time the institution is certified under subpart 3 of this part.

(Pub. L. 89-329, title IV, § 495, as added Pub. L. 105-244, title IV, § 491(2), Oct. 7, 1998, 112 Stat. 1758.)

#### PRIOR PROVISIONS

Prior sections 1099a to 1099a-3 were omitted in the general amendment of this subpart by Pub. L. 105-244.

Section 1099a, Pub. L. 89-329, title IV, § 494, as added Pub. L. 102-325, title IV, § 499, July 23, 1992, 106 Stat. 635, authorized State postsecondary review program.

Section 1099a-1, Pub. L. 89-329, title IV, § 494A, as added Pub. L. 102-325, title IV, § 499, July 23, 1992, 106 Stat. 635, related to State postsecondary review entity agreements.

Section 1099a-2, Pub. L. 89-329, title IV, § 494B, as added Pub. L. 102-325, title IV, § 499, July 23, 1992, 106 Stat. 637, related to Federal reimbursement of State postsecondary review costs.

Section 1099a-3, Pub. L. 89-329, title IV, § 494C, as added Pub. L. 102-325, title IV, § 499, July 23, 1992, 106 Stat. 637; amended Pub. L. 103-208, § 2(i)(1), (2), Dec. 20, 1993, 107 Stat. 2478, related to functions of State review entities.

### SUBPART 2—ACCREDITING AGENCY RECOGNITION

#### CODIFICATION

Pub. L. 105-244, title IV, § 492(a)(1), Oct. 7, 1998, 112 Stat. 1759, substituted “RECOGNITION” for “APPROVAL” in heading.

## § 1099b. Recognition of accrediting agency or association

### (a) Criteria required

No accrediting agency or association may be determined by the Secretary to be a reliable authority as to the quality of education or training offered for the purposes of this chapter and part C of subchapter I of chapter 34 of title 42 or for other Federal purposes, unless the agency or association meets criteria established by the Secretary pursuant to this section. The Secretary shall, after notice and opportunity for a hearing, establish criteria for such determinations. Such criteria shall include an appropriate measure or measures of student achievement. Such criteria shall require that—

(1) the accrediting agency or association shall be a State, regional, or national agency or association and shall demonstrate the ability and the experience to operate as an accrediting agency or association within the State, region, or nationally, as appropriate;

(2) such agency or association—

(A)(i) for the purpose of participation in programs under this chapter and part C of subchapter I of chapter 34 of title 42, has a voluntary membership of institutions of higher education and has as a principal purpose the accrediting of institutions of higher education; or

(ii) for the purpose of participation in other programs administered by the Department of Education or other Federal agencies, has a voluntary membership and has as its principal purpose the accrediting of institutions of higher education or programs;

(B) is a State agency approved by the Secretary for the purpose described in subparagraph (A); or

(C) is an agency or association that, for the purpose of determining eligibility for student assistance under this subchapter and part C of subchapter I of chapter 34 of title 42, conducts accreditation through (i) a voluntary membership organization of individuals participating in a profession, or (ii) an agency or association which has as its principal purpose the accreditation of programs within institutions, which institutions are accredited by another agency or association recognized by the Secretary;

(3) if such agency or association is an agency or association described in—

(A) subparagraph (A)(i) of paragraph (2), then such agency or association is separate